

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

**ST. PAUL FIRE AND MARINE
INSURANCE COMPANY, a foreign insurer,**

Plaintiff,

v.

TALIESEN CORPORATION, a Washington corporation,

Defendant.

NO. C09-1788 JLR

ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS OF TALIESIN CORPORATION

JURY DEMAND

Defendant Taliesen Corporation (“Taliesen”) responds to the allegations in plaintiff

St. Paul Fire and Marine Insurance Company's Complaint for Declaratory Relief ("Complaint") as follows:

I. PARTIES

1.1 Admitted.

1.2 Taliesen admits that it is a Washington corporation and was the owner, developer and seller of the condominium building located in Seattle, King County, Washington, known as Meridian Condominiums, but denies the remaining allegations of this paragraph.

ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS OF TALIESIN CORPORATION - 1

C09-1788 JLR
11445-030536 474692

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1 **II. JURISDICTION AND VENUE**

2 2.1 Admitted.

3 2.2 Admitted.

4 **III. FACTS**

5 **A. Construction of Meridian Condominiums**

6 3.1 Taliesen admits that construction on the Meridian began in June or July of
7 2000 and that, until it conveyed title to condominium units beginning in December 2002,
8 it was the sole legal owner of the real estate improvements at the Meridian. Except as
9 admitted herein, this paragraph is denied.

10 3.2 Taliesen admits that construction on the Meridian continued from its
11 beginning in June or July 2000 to early December 2002, when construction of almost all
12 units was completed. Except as admitted herein, this paragraph is denied.

13 3.3 Taliesen admits that the Meridian is a twenty-six story condominium
14 building located at 1420 Terry Avenue, Seattle, Washington, and comprised of 161
15 units. Except as admitted herein, this paragraph is denied.

16 3.4 Taliesen admits that temporary certificates of occupancy were issued in
17 December, 2002, involving almost all of the condominium units at the Meridian, and that
18 a final certificate of occupancy was not issued until the penthouse units were completed
19 some time later. Except as admitted herein, this paragraph is denied.

20 **B. St. Paul's Policy Periods**

21 4.1 Taliesen admits that St. Paul issued a policy of insurance containing
22 commercial general liability coverage by policy number CX04900398 with an inception
23 date of July 19, 2000 for the period July 19, 2000 to July 19, 2001, and which was

ANSWER, AFFIRMATIVE DEFENSES, AND
COUNTERCLAIMS OF TALIESEN CORPORATION - 2

C09-1788 JLR
11445-030536 474692

STAFFORD FREY COOPER

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1 renewed for the policy period July 19, 2001 to July 19, 2002, and then extended by
2 endorsement until December 31, 2002 (hereinafter the "2000-2002 policy"). Except as
3 admitted herein, this paragraph is denied.

4 4.2 Taliesen admits that St. Paul renewed policy CX04900398 at expiration
5 with a policy of insurance containing commercial general liability coverage as policy
6 number CX04900521, with an inception date of December 31, 2002 (hereinafter the
7 "2003-2004 policy"). Except as admitted herein, this paragraph is denied.

8 4.3 Admitted.

9 **C. Taliesen's Ownership and Sale of the Meridian Condominium Units**

10 5.1 Taliesen admits that as of the inception date of policy CX04900398 on
11 July 19, 2000, the Meridian was solely owned by Taliesen. Except as admitted herein,
12 this paragraph is denied.

13 5.2 Taliesen admits that as of the inception date of policy CX04900521 on
14 December 31, 2002, Taliesen owned units at the Meridian. Except as admitted herein,
15 this paragraph is denied.

16 5.3 Taliesen admits that as of October 1, 2003, Taliesen owned units at the
17 Meridian. Except as admitted herein, this paragraph is denied.

18 5.4 Taliesen admits that as of the expiration of policy CX04900521 on
19 March 22, 2004, Taliesen owned units at the Meridian. Except as admitted herein, this
20 paragraph is denied.

21 5.5 Admitted.

1 **D. Notice of Defects and Water Intrusion to Taliesen**

2 6.1 Taliesen admits that the date of its first actual knowledge of the Meridian
3 water intrusion was approximately the first week in November, 2003. Except as
4 admitted herein, this paragraph is denied.

5 6.2 Taliesen admits that on November 21, 2003, Taliesen retained Spratt
6 Emanuel Engineering to conduct a building envelop review. Taliesen also admits that
7 Spratt Emanuel issued a report dated November 26, 2003, which document speaks for
8 itself, and Taliesen denies that the selective allegations contained in this paragraph are
9 true and complete. Except as admitted herein, this paragraph is denied.

10 6.3 Taliesen admits that on approximately January 14, 2004, Morrison
11 Herschfield issued a report to the Meridian Homeowner's Association ("Meridian HOA")
12 regarding its preliminary review of the building envelop. Said report speaks for itself,
13 and Taliesen denies that the selective allegations contained in this paragraph are true
14 and complete. Except as admitted herein, this paragraph is denied.

15 6.4 Taliesen admits that on February 25, 2004, Taliesen sent to the Meridian
16 HOA's engineering consultant a letter outlining a short synopsis of what it intended to do
17 address complaints from the Meridian HOA. Said letter speaks for itself, and Taliesen
18 denies that the selective allegations contained in this paragraph are true and complete.
19 Except as admitted herein, this paragraph is denied.

20 6.5 Taliesen admits that on April 23, 2004, it sent a letter to all Meridian
21 homeowners. Said letter speaks for itself, and Taliesen denies that the selective
22 allegations contained in this paragraph are true and complete. Except as admitted
23 herein, this paragraph is denied.

ANSWER, AFFIRMATIVE DEFENSES, AND
COUNTERCLAIMS OF TALIESEN CORPORATION - 4

C09-1788 JLR
11445-030536 474692

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1 6.6 Taliesen admits that in May 2004 it corresponded with the Meridian HOA's
2 attorneys. Said letter speaks for itself, and Taliesen denies that the selective
3 allegations contained in this paragraph are true and complete. Except as admitted
4 herein, this paragraph is denied.

5 6.7 Taliesen admits that on or about July 30, 2004, it signed an agreement
6 with the Meridian HOA. Said agreement speaks for itself, and Taliesen denies that the
7 selective allegations contained in this paragraph are true and complete. Except as
8 admitted herein, this paragraph is denied.

9 6.8 Taliesen admits that in addition to construction defect repairs, it performed
10 certain warranty repairs, but except as admitted herein, this paragraph is denied.

11 6.9 Taliesen admits that it has settled the claims of construction defect with
12 the Meridian HOA, but that except as admitted herein, this paragraph is denied.

13 **E. St. Paul's Investigation Into the Claim by Taliesen**

14 7.1 Taliesen admits that it sent St. Paul a notice of loss dated April 27, 2004.
15 Said document speaks for itself, and the selective quotations are incomplete, and in
16 some cases inaccurate and, therefore, Taliesen defendant denies the same.

17 7.2 Taliesen denies all allegations in this paragraph.

18 7.3 Taliesen denies all allegations in this paragraph.

19 7.4 Taliesen admits that on July 15, 2004, St. Paul sent a letter to Taliesen
20 acknowledging receipt of notice of a potential claim. Said document speaks for itself,
21 and the selective quotations are incomplete, and in some cases inaccurate and,
22 therefore, Taliesen defendant denies the same.

1 7.5 Taliesen admits that St. Paul sent it a letter dated December 7, 2004, and
2 said letter speaks for itself. St. Paul subsequently sent Taliesen a letter dated June 21,
3 2005. Taliesen denies that the selective characterizations of these letters are true and
4 complete, and therefore except as admitted herein, this paragraph is denied.

5 7.6 Taliesen admits that St. Paul sent it a letter dated August 23, 2005, and
6 said letter speaks for itself. Taliesen denies that the selective characterizations of this
7 letter is true and complete, and therefore except as admitted herein, this paragraph is
8 denied.

9 7.7 Taliesen admits that St. Paul sent it a letter dated September 29, 2006,
10 2005, which speaks for itself. Taliesen denies that the selective characterizations of this
11 letter is true and complete, and therefore except as admitted herein, this paragraph is
12 denied.

13 7.8 Taliesen admits that St. Paul sent it a letter dated January 6, 2006, which
14 speaks for itself. Taliesen denies that the selective characterizations of this letter is true
15 and complete, and therefore except as admitted herein, this paragraph is denied.

16 7.9 Taliesen admits that St. Paul sent it a letter dated February 6, 2006, which
17 speaks for itself. Taliesen denies that the selective characterizations of this letter is true
18 and complete, and therefore except as admitted herein, this paragraph is denied.

19 7.10 Taliesen admits that St. Paul sent it letters dated April 7, 2006,
20 November 1, 2006, and June 11, 2007, all of which speak for themselves. Taliesen
21 denies that the selective characterizations of these letters are true and complete and,
22 therefore, except as admitted herein, this paragraph is denied.

23
ANSWER, AFFIRMATIVE DEFENSES, AND
COUNTERCLAIMS OF TALIESEN CORPORATION - 6

C09-1788 JLR
11445-030536 474692

STAFFORD FREY COOPER

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1 7.11 Taliesen admits that St. Paul sent it a letter dated June 19, 2007, which
2 speaks for itself. Taliesen denies that the selective characterizations of this letter is true
3 and complete and, therefore, except as admitted herein, this paragraph is denied.

4 7.12 Taliesen admits that in February 2008 it advised St. Paul that it would
5 compile the documents supporting its claim, and that these documents were provided in
6 July 2008. Taliesen denies the selective characterization of these materials and,
7 therefore, except as admitted herein, this paragraph is denied.

8 7.13 Taliesen admits that it had a meeting with St. Paul's attorney in which
9 St. Paul's adjuster participated by telephone to discuss the claim. Taliesen denies the
10 selective allegations of the conversation as incomplete and inaccurate and, therefore,
11 except as admitted, the allegations of this paragraph are denied.

12 7.14 Taliesen admits that St. Paul's attorney sent it a letter dated November 24,
13 2008, which speaks for itself. Taliesen denies that the selective characterizations of this
14 letter is true and complete and, therefore, except as admitted herein, this paragraph is
15 denied.

16 7.15 Taliesen incorporates its answer to paragraph 7.14 herein.

17 7.16 Taliesen admits that St. Paul's attorney sent it letters dated December 11,
18 2008, January 6, 2009 and February 13, 2009, which letters speak for themselves.
19 Taliesen denies that the selective characterizations of these letters are true and
20 complete and, therefore, except as admitted herein, this paragraph is denied.

21 7.17 Taliesen admits that on March 18, 2009 it provided St. Paul's attorney with
22 a letter dated March 12, 2009 and voluminous supporting materials. Said letter and
23 supporting materials speak for themselves, and Taliesen denies the selective and

ANSWER, AFFIRMATIVE DEFENSES, AND
COUNTERCLAIMS OF TALIESEN CORPORATION - 7

C09-1788 JLR
11445-030536 474692

STAFFORD FREY COOPER

PROFESSIONAL CORPORATION

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Seattle WA 98101.1374

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1 inaccurate characterization of these materials and, therefore, except as admitted herein,
2 this paragraph is denied.

3 7.18 Taliesen admits that it had conversations with St. Paul's attorney and
4 adjuster in April and June 2009, but denies the selective characterization of said
5 conversations and, therefore, except as admitted herein, this paragraph is denied.,

6 7.19 Taliesen admits that St. Paul's counsel sent it a letter dated
7 September 29, 2009, and said letter speaks for itself. Taliesen denies the selective and
8 inaccurate characterization of this letter and, therefore, except as admitted herein, this
9 paragraph is denied.

10 7.20 Admitted.

11 **F. Applicable Policy Provisions**

12 8.1 Admitted that St. Paul issued policy number CX04900521, as a renewal of
13 policy number CX04900398, to Named Insured "Taliesen Corporation and/or 2211
14 E. Madison LLC and/or Generation Holding Ltd." which was applicable for the policy
15 period December 31, 2002 to December 31, 2003, and extended thereafter by
16 endorsement until March 22, 2004. Except as admitted, this paragraph is denied.

17 8.2 Admit that St. Paul has selectively quoted from sections of the policy
18 identified in answer to paragraph 8.1 above, but that said document speaks for itself,
19 and that selective quotations omit material terms and conditions, and therefore this
20 paragraph is denied.

21 8.3 Admit that St. Paul has selectively quoted from sections of the policy
22 identified in answer to paragraph 8.1 above, but that said document speaks for itself,
23

ANSWER, AFFIRMATIVE DEFENSES, AND
COUNTERCLAIMS OF TALIESEN CORPORATION - 8

C09-1788 JLR
11445-030536 474692

STAFFORD FREY COOPER

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1 and that selective quotations omit material terms and conditions and, therefore, this
2 paragraph is denied.

3 8.4 Admit that St. Paul has selectively quoted from some of the exclusionary
4 provisions of the policy identified in answer to paragraph 8.1 above, but that said
5 document speaks for itself, and that said quoted provisions are not applicable to the
6 claims of Named Insureds and, therefore, this paragraph is denied.

7 8.5 Admit that St. Paul has quoted from an exclusionary provision allegedly
8 made a part of the policy identified in answer to paragraph 8.1 above, but that said
9 document speaks for itself, that said water damage exclusion is not a valid and
10 enforceable part of the policy and further was deleted by endorsement, and is therefore
11 not applicable to the claims of Taliesen, and therefore this paragraph is denied.

12 8.6 Admit that St. Paul has selectively quoted from some of the provisions of
13 the policy identified in answer to paragraph 8.1 above, but that said document speaks
14 for itself, and that said quoted provisions are not applicable to the claims of Taliesen
15 and, therefore, this paragraph is denied.

16 8.7 Admit that St. Paul has quoted from an exclusionary provision allegedly
17 made a part of the policy identified in answer to paragraph 8.1 above, but that said
18 document speaks for itself, and that said exclusion is not a valid and enforceable part of
19 the policy, and is therefore not applicable to the claims of Taliesen and, therefore, this
20 paragraph is denied.

IV. REQUEST FOR DECLARATORY RELIEF

A. No Obligation to Indemnify Because There Is No Property Damage Occurring During the Subject Policy.

9.1 Taliesen repeats and reiterates its answers to all prior paragraphs as if fully set forth herein.

9.2 Taliesen denies this paragraph.

9.3 Taliesen denies this paragraph.

9.4 Taliesen denies this paragraph.

9.5 Taliesen denies this paragraph.

B. No Obligation to Indemnify Because of "Your Products and Completed Work" Limit of Coverage

10.1 Taliesen repeats and reiterates its answers to all prior paragraphs as if fully set forth herein.

10.2 Taliesen denies this paragraph.

10.3 Taliesen denies this paragraph.

10.4 Taliesen denies this paragraph.

10.5 Taliesen denies this paragraph.

10.6 Taliesen denies this paragraph.

C. No Obligation to Indemnify Because of Policy Exclusion for Contract Liability

11.1 Taliesen repeats and reiterates its answers to all prior paragraphs as if fully set forth herein.

11.2 Taliesen denies this paragraph.

11.3 Taliesen denies this paragraph.

11.4 Taliesen denies this paragraph.

**ANSWER, AFFIRMATIVE DEFENSES, AND
COUNTERCLAIMS OF TALIESEN CORPORATION - 10**

C09-1788 JLR
11445-030536 474692

STAFFORD FREY COOPER

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1 11.5 Taliesen denies this paragraph.

2 **D. No Obligation to Indemnify to Damage to Property Owned or Occupied by**
3 **Taliesen**

4 12.1 Taliesen repeats and reiterates its answers to all prior paragraphs as if
fully set forth herein.

5 12.2 Taliesen denies this paragraph.

6 12.3 Taliesen denies this paragraph.

7 12.4 Taliesen denies this paragraph.

8 12.5 Taliesen denies this paragraph.

9 12.6 Taliesen denies this paragraph.

10 **E. No Obligation to Indemnity Because of Policy Exclusion for Impaired**
11 **Property**

12 13.1 Taliesen repeats and reiterates its answers to all prior paragraphs as if
fully set forth herein.

13 13.2 Taliesen denies this paragraph.

14 13.3 Taliesen denies this paragraph.

15 13.4 Taliesen denies this paragraph.

16 **F. No Obligation to Indemnify Because of Policy Exclusion for Water Damage**

17 14.1 Taliesen repeats and reiterates its answers to all prior paragraphs as if
fully set forth herein.

18 14.2 Taliesen denies this paragraph.

19 14.3 Taliesen denies this paragraph.

20 14.4 Taliesen denies this paragraph.

1 **G. No Obligation to Indemnify or Defend Because of Taliesen's Failure
2 to Comply**

3 15.1 Taliesen repeats and reiterates its answers to all prior paragraphs as if
4 fully set forth herein.

5 15.2 Taliesen denies this paragraph.

6 15.3 Taliesen denies this paragraph.

7 15.4 Taliesen denies this paragraph.

8 15.5 Taliesen denies this paragraph.

9 **H. Limitation of Coverage for First Manifestation of Property Damage**

10 16.1 Taliesen repeats and reiterates its answers to all prior paragraphs as if
11 fully set forth herein.

12 16.2 Taliesen denies this paragraph.

13 16.3 Taliesen denies this paragraph.

14 16.4 Taliesen denies this paragraph.

15 **I. Reimbursement of Fees**

16 17.1 Taliesen repeats and reiterates its answers to all prior paragraphs as if
17 fully set forth herein.

18 17.2 Taliesen denies this paragraph.

19 17.3 Taliesen denies this paragraph.

20 17.4 Taliesen denies this paragraph.

21 17.5 Taliesen denies this paragraph.

J. There Is No Coverage for Any Property Damage Taliesen Knew of Prior to the Inception of the Policy

18.1 Taliesen repeats and reiterates its answers to all prior paragraphs as if fully set forth herein.

18.2 Taliesen denies this paragraph.

18.3 Taliesen denies this paragraph.

K. No Coverage on Repair or Restoration of Property Because of Taliesen's Incorrect Work

19.1 Taliesen repeats and reiterates its answers to all prior paragraphs as if fully set forth herein.

19.2 Taliesen denies this paragraph.

19.3 Taliesen denies this paragraph.

L. Other Applicable Policy Provisions and Reservation of Rights

20.1 Taliesen repeats and reiterates its answers to all prior paragraphs as if fully set forth herein.

20.2 Taliesen denies this paragraph.

20.3 Taliesen denies this paragraph.

V. AFFIRMATIVE DEFENSES

Having fully answered the allegations contained in the Complaint, and by way of further answer, Taliesen asserts the following affirmative defenses:

21.1 St. Paul's 2003-2004 policy's definition of "property damage" states in part:

Of course, if there's a continuation, change, or resumption, after this agreement ends, of physical damage to tangible property of others that:

- 1 • Isn't previously known physical damage to tangible
 2 property of others; and
 3 • Happens while this agreement is in effect;

4 we'll consider such continuation, change, or resumption to also happen
 5 while this agreement is in effect if that would be the result because of a
 6 continuous, multiple, or other coverage trigger required under the law that
 7 applies.

8 In Washington, under *American Nat'l Fire v. B & L Trucking*, 134 Wn.2d 413,
 9 429, 951 P.2d 250 (1998) and *Polygon NW v. Am. Nat'l Fire Ins.*, 143 Wn. App. 753,
 10 773, 189 P.3d 777 (2008), an insurer such as St. Paul is jointly and severally liable for
 11 all progressive property damage if any part of the progressive property damage occurs
 12 during the policy period. Under the above quoted provision of St. Paul's 2003-2004
 13 policy, all continuation, change or resumption of progressive property damage at the
 14 Meridian that occurred after the policy expired is considered to have happened during
 15 the 2003-2004 policy period.

16 21.2 Under the provision of the policy quoted in paragraph 21.1 above,
 17 St. Paul's 2003-2004 policy covers any "continuation, change or resumption" of property
 18 damage to the property of others that happened during the policy period, including any
 19 continuation, change or resumption of property damage to property of others which
 20 happens after March 22, 2004.

21 21.3 St. Paul's 2000-2002 and 2003-2004 policies' definition of "your products"
 22 states that

23 We won't consider the following to be your products:

- 24 • Goods or products that are still in your physical
 25 possession or on a premises that you . . own.
 26 • Real property . . .

Under the above-quoted provision, the undivided property interest in the Meridian that was owned by Taliesen and other Named Insureds was not within the policy's definition of "your products" because it is "real property," or goods or products still on a premises that was owned by Taliesen and the other Named Insureds, and therefore St. Paul's "damage to your products" exclusion does not apply.

21.4 St. Paul's 2000-2002 and 2003-2004 policies' definition of "your completed work" states that :

"But we won't consider the following to be your completed work":

- . . . Any premises or other real property that you own.
- Any work done to a premises or other real property that you rent or lease from other, or own.
- Any work while on a premises that you rent, lease, or borrow from others, or own.

Under the above-quoted provision, the undivided property interest in the Meridian that was owned by Taliesen and other Named Insureds was not within the policy's definition of "your completed work" because it is "premises or other real property," because it was "work done to a premises or other real property," and because it was work while on premises" and, therefore, the "Damage to completed work" exclusion in the policy does not apply.

21.5 St. Paul's 2000-2002 and 2003-2004 policies' exclusion for property damage to your completed work has an exception that states:

But we won't apply this exclusion part to such property damage if

- This agreement provides completed work liability coverage; and
- Your completed work that's damaged, or your completed work that causes the property damage, was done for you by others.

ANSWER, AFFIRMATIVE DEFENSES, AND
COUNTERCLAIMS OF TALIESEN CORPORATION - 15

C09-1788 JLR
11445-030536 474692

STAFFORD FREY COOPER

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1 The property damage that occurred at the Meridian during the policy period was
 2 done for Taliesen by others, and therefore under this quoted provision Plaintiff's
 3 "completed work" exclusion does not apply.

4 21.6 St. Paul's 2000-2002 and 2003-2004 policies have a specific exclusion
 5 entitled "breach of contract" that does not apply, according to its terms, to the liability of
 6 a protected person for bodily injury and property damage. St. Paul's 2000-2002 and
 7 2003-2004 policies also have a separate exclusion for "contract liability" which,
 8 according to its terms, applies only to injury or damage for which the protected person
 9 "has assumed liability under any contract or agreement." Under *King County v.*
 10 *Travelers Ins. Co.*, 1996 WL 257135, 1996 U.S. Dist. LEXIS 21946 (WD WA 1996) this
 11 exclusion for liability "assumed" only applies to claims against an insured under
 12 indemnification and hold harmless agreements. The claims of the Meridian HOA did not
 13 allege that Taliesen "assumed" its liability and accordingly the "contract liability" exclusion
 14 in the policy does not apply to the Meridian HOA claims of damage. Further, even if the
 15 Meridian HOA claimed Taliesen was liable because of an assumption of liability in a
 16 contract or agreement, the "contract liability" exclusion specifically does not apply to "injury
 17 or damage for which the protected person would have liability without the contract or
 18 agreement." The Meridian HOA claimed Taliesen was liable under the terms of the
 19 statutory implied warranty of quality set forth in RCW 64.34.445, and therefore the
 20 "contract liability" exclusion does not apply to Taliesen's liability.

21 21.7 St. Paul's 2000-2002 and 2003-2004 policies' exclusion entitled "control of
 22 property" only applies to damage to that portion of the undivided interests that property
 23 owned by the Named Insured. The physical damage to the Meridian was a continuous

ANSWER, AFFIRMATIVE DEFENSES, AND
COUNTERCLAIMS OF TALIESEN CORPORATION - 16

C09-1788 JLR
11445-030536 474692

STAFFORD FREY COOPER

PROFESSIONAL CORPORATION

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1 and progressive process that continued even after the policies expired. At the time that
2 Taliesen's 2003-2004 policy expired on March 22, 2004, Taliesen only owned 41 units
3 which was 25.47% of the total number of units, and accordingly, under the *English Cove*
4 decision the "control of property" exclusion for property owned only applies to only
5 approximately 25.47% of property damage to common areas of the Meridian.

6 21.8 St. Paul's claims of Taliesen's failure to comply with its obligations under the
7 policy are barred by the doctrine of waiver because St. Paul was aware and failed to object
8 to Taliesen's actions to resolve the Meridian HOA claims without litigation.

9 21.9 St. Paul violated RCW 48.18.2901(2) in attempting to renew the 2003-
10 2004 policy without providing the required explanation of any change in the contract
11 provisions and, therefore, all such attempted modifications of the 2003-2004 policy are
12 invalid and the policy is renewed on the terms and conditions as expiring.

13 21.10 St. Paul has materially misrepresented the provisions of the insurance
14 policies issued to Taliesen by ignoring applicable policy language and controlling
15 Washington law, and as a result of its misrepresentations St. Paul is estopped to deny
16 coverage.

17 21.11 Taliesen hereby reserves the right to file an Amended Answer and
18 Affirmative Defenses after having an opportunity to complete discovery.

19 **VI. COUNTERCLAIMS**

20 22.1 Taliesen repeats and reiterates all prior paragraphs of its Answer, as if
21 fully set forth herein.

22 22.2 St. Paul Fire and Marine Insurance Company ("St. Paul") is a foreign
23 insurer licensed to conduct the business in the State of Washington. It is incorporated

1 in the State of Minnesota and, on information and belief, it has its principal place of
2 business in Minnesota.

3 22.3 Taliesen Corporation ("Taliesen") is a Washington corporation doing
4 business in Seattle, King County, Washington.

5 22.4 Jurisdiction of the claim is properly before this Court pursuant to USC 28
6 §1332, et. seq., in that diversity of citizenship exists among the parties and the amount
7 in controversy exceeds \$75,000.

8 22.5 This action involves a dispute over the application of insurance coverage
9 for claim of the Meridian Homeowners Association ("Meridian HOA") against Taliesen
10 arising out of the construction of a twenty-six story condominium building located at
11 1420 Terry Avenue, Seattle, King County, Washington. As a result, venue is properly
12 before this Court.

13 23.1 St. Paul issued a policy of insurance number CX04900398 containing
14 commercial general liability coverage to Named Insured Taliesen, for a policy period
15 July 19, 2000 to July 19, 2001, and renewed for the policy period July 19, 2001 to
16 July 19, 2002, and then extended by endorsements to December 31, 2002 ("the 2000-
17 2002 policy"). St. Paul renewed the 2000-2002 policy with policy number CX04900521,
18 also including commercial general liability coverage for the policy period December 31,
19 2002 to December 31, 2003, and then extended by endorsements to March 22, 2004
20 ("the 2003-2004 policy"). The Named Insured on the 2003-2004 policy was "Taliesen
21 Corp. and/or 2211 E. Madison LLC and/or Generation Holding Ltd."

22 23.2 Taliesen was the owner and developer of a 26-story condominium building
23 known as The Meridian located on Terry Avenue in Seattle. Construction began in

ANSWER, AFFIRMATIVE DEFENSES, AND
COUNTERCLAIMS OF TALIESEN CORPORATION - 18

C09-1788 JLR
11445-030536 474692

STAFFORD FREY COOPER

PROFESSIONAL CORPORATION

601 Union Street, Suite 3100

Seattle WA 98101.1374

TEL 206.623.9900 FAX 206.624.6885

1 2000, and Taliesen employed various contractors, engineers and consultants
2 subcontractors to perform services in the construction of the building. Construction was
3 substantially completed in December 2002, and Taliesen closed sales of residential
4 condominium units beginning on December 11, 2002.

5 23.3 In early November 2003, Taliesen became aware of certain instances
6 where water intrusion was observed in the building envelope. Taliesen requested an
7 investigation by its envelop consultant and notified the Meridian HOA which also
8 retained a consulting engineer. In January 2004, the Meridian HOA consulting engineer
9 issued a report setting forth its preliminary review of the building envelope systems
10 including alleged construction defects.

11 23.4 When Taliesen learned of the magnitude of Meridian HOA's alleged
12 construction defects and the damage claims, and the fact that the Meridian HOA had
13 retained counsel to present construction defect claims, Taliesen advised St. Paul of the
14 Meridian situation in April, 2004.

15 23.5 The Meridian HOA sent Taliesen a notice of claim under RCW 64.50
16 dated June 3, 2004. Said notice alleged that the Meridian building had sustained
17 physical damage to tangible property in numerous respects. A copy of said notice of
18 claim was promptly provided to St. Paul. Taliesen's response to said notice of claim
19 was rejected by the Meridian HOA, which insisted upon all of its rights under
20 Washington condominium law, including the statutory implied warranties of quality
21 construction. St Paul was advised and was aware of Taliesen efforts to resolve the
22 Meridian HOA's claims without resort to litigation, and at no time did St. Paul object, or
23

ANSWER, AFFIRMATIVE DEFENSES, AND
COUNTERCLAIMS OF TALIESEN CORPORATION - 19

C09-1788 JLR
11445-030536 474692

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1 advise Taliesen that St. Paul refused to approve a resolution of the Meridian HOA
2 claims that did not involve litigation.

3 23.6 Taliesen incurred reasonable and necessary expenses for labor, material,
4 contractors, consultants, vendors and its internal overhead expenses in its efforts to
5 reach an agreement to resolve the Meridian HOA's claims in an amount that will be
6 proven at trial, but which is estimated to be in excess of \$1.5 million. In July 2008,
7 Taliesen provided St. Paul with a copy of the supporting documentation for said claim.
8 St. Paul has refused to pay said claim.

9 **24. Breach of Insurance Contract Claim**

10 24.1 St. Paul's 2000-2002 and 2003-2004 policies provide Taliesen with
11 coverage for amounts that Taliesen was legally required to pay for covered property
12 damage to the property of Meridian condominium owners including any continuation,
13 change or resumption of such damage that occurred after the said policies expired.

14 24.2 The Meridian sustained numerous continuous and progressive instances
15 of water intrusion through its roof, walls and other structural members during St. Paul's
16 2000-2002 and 2003-2004 policies. Said water intrusion constituted physical damage
17 to tangible property of others. The Meridian HOA claimed that Taliesen was legally
18 required to pay for such physical damage to tangible property at the Meridian
19 condominium, including the continuation, change or resumption of such damage that
20 occurred after the said policies expired.

21 24.3 With St. Paul's knowledge and consent, Taliesen agreed to resolve the
22 claims of the Meridian HOA set out in the proceeding paragraph by performing and/or
23 paying for others to perform work on the Meridian building to both repair continuing and

ANSWER, AFFIRMATIVE DEFENSES, AND
COUNTERCLAIMS OF TALIESEN CORPORATION - 20

C09-1788 JLR
11445-030536 474692

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progressive property damage, as well as to prevent property damage that continued, changed or resumed after the St. Paul policies expired.

24.4 Taliesen has incurred reasonable and necessary sums in an amount to be proven at trial, which are estimated to be in excess of \$1.5 million to settle and resolve the above referenced claims of Meridian HOA.

24.5 St. Paul has breached its duty under said policies by refusing to pay the amounts that Taliesen incurred and paid to settle and resolve the Meridian HOA claims.

25. Olympic Steamship Attorney's Fees

25.1 Taliesen has been compelled to incur reasonable and necessary litigation costs and expense in order to obtain the benefits of its insurance policies with St. Paul. Under the *Olympic Steamship* doctrine, Taliesen is entitled to an award of its reasonable and necessary litigation expense against St. Paul.

26. Reservation of Right to File Amended Counterclaims

26.1 Taliesen reserves the right to file an amended Counterclaim dealing with St. Paul's claims handling and compliance with Washington statutory and common law related to bad faith claims handling once it has obtained discovery of St. Paul's claims file and an opportunity to depose any St. Paul witness with knowledge of how it handled the claims of the Meridian HOA against Taliesen.

VII. JURY DEMAND

Defendant Taliesen Corporation hereby demands a jury pursuant to Fed. R. Civ. P. 38.

VIII. PRAYER FOR RELIEF

WHEREFORE, defendant Taliesen Corporation prays for judgment against plaintiff as follows:

1. That the Court deny all of St. Paul's requests for relief, including its requested declaratory judgments;
 2. That the Court award Taliesen all damages proximately caused by St. Paul's breach of insurance contracts in an amount to be proven at trial;
 3. An award of litigation costs incurred by Taliesen for efforts to obtain insurance coverage pursuant to *Olympic Steamship*;
 - 4.. Interest and taxable costs; and
 5. Such other and further relief as the Court deems just and equitable.

DATED this 19th day of February, 2010.

STAFFORD FREY COOPER

By: /s/ A. Richard Dykstra via ECF
A. Richard Dykstra, WSBA #5114
Attorneys for Defendant Taliesen Corporation

**ANSWER, AFFIRMATIVE DEFENSES, AND
COUNTERCLAIMS OF TALIESIN CORPORATION - 22**

C09-1788 JLR
11445-030536 474692

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Certificate of Service

I certify that on the date noted below I electronically filed this document entitled ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS OF TALIESEN CORPORATION with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following persons:

Thomas Lether
Morgan Emmerton Smith
Cole, Lether, Wathen & Leid P.C.
1000 Second Avenue, Suite 1300
Seattle, WA 98104-1082

Attorneys for Plaintiff St. Paul Fire and Marine Insurance Company

DATED this 19th day of February, 2010, at Seattle, Washington.

/s/ A. Richard Dykstra via ECF

**ANSWER, AFFIRMATIVE DEFENSES, AND
COUNTERCLAIMS OF TALIESEN CORPORATION - 23**

C09-1788 JLR
11445-030536 474692

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